



Legal Document

Superior Court of California, County of San Francisco
Case No. CGC 00 310481
Carolina Casualty Vs The Scott Companies

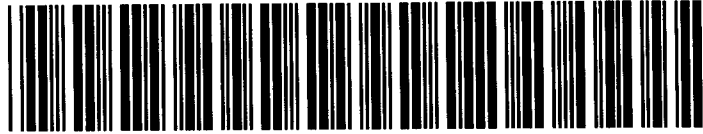
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GENERAL DENIAL

CAROLINA CASUALTY VS THE SCOTT COMPANIES

001C01043322

Instructions:

Please place this sheet on top of the document to be scanned.

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address):

TELEPHONE NO.:

FOR COURT USE ONLY

(415) 781-6070

Stephen L. Porter
 Whitehead, Porter & Gordon LLP
 220 Montgomery Street, Suite 1850
 San Francisco, CA 94104

ATTORNEY FOR (Name): Scott Co. of California

Insert name of court, name of judicial district, and branch court, if any:

Superior Court of California
 Unlimited Civil Jurisdiction

PLAINTIFF: Carolina Casualty Company

DEFENDANT: The Scott Companies, et al.

FILED
 San Francisco County Superior Court

SEP 16 2004

GORDON PARK-LI, Clerk

BY:  Deputy Clerk

GENERAL DENIAL

CASE NUMBER:

CGC 00 310481

You MUST use this form for your general denial if the amount asked for in the complaint or the value of the property involved is \$1000 or less.

You MAY use this form if:

1. The complaint is not verified, OR
2. The complaint is verified, and the action is subject to the economic litigation procedures of the municipal and justice courts,

EXCEPT

You MAY NOT use this form if the complaint is verified and involves a claim for more than \$1000 that has been assigned to a third party for collection.

(See Code of Civil Procedure sections 90-100, 431.30, and 431.40.)

1. DEFENDANT (name): The Scott Companies, Inc.; Scott Company of California; Scott-Norman Mechanical, Inc. generally denies each and every allegation of plaintiff's complaint. Joseph Guglielmo; Robert Nurisso; Richard Davis
2. ☒ DEFENDANT states the following FACTS as separate affirmative defenses to plaintiff's complaint (attach additional pages if necessary):
See attached.

Date:

9/14/04

Stephen L. Porter

(TYPE OR PRINT NAME)

(SIGNATURE OF DEFENDANT OR ATTORNEY)

If you have a claim for damages or other relief against the plaintiff, the law may require you to state your claim in a special pleading called a cross-complaint or you may lose your claim. (See Code of Civil Procedure sections 426.10-426.40.)

The original of this General Denial must be filed with the clerk of this court with proof that a copy was served on each plaintiff's attorney and on each plaintiff not represented by an attorney. (See the other side for a proof of service.)

GENERAL DENIAL

CCP 431.30, 431.40

**ATTACHMENT TO GENERAL DENIAL OF THE SCOTT COMPANIES, INC.; SCOTT
COMPANY OF CALIFORNIA; SCOTT-NORMAN MECHANICAL, INC.; JOSEPH
GUGLIELMO; ROBERT NURISSO; and RICHARD DAVIS
TO THE COMPLAINT OF CAROLINA CASUALTY COMPANY**

San Francisco Superior Court Case No. CGC-00-310481

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The complaint, and each purported cause of action therein, fail to state facts sufficient to constitute a cause of action upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiff waived and/or released its rights to the relief sought in its complaint.

THIRD AFFIRMATIVE DEFENSE

The damages and harm alleged by plaintiff, if any there were, were proximately caused or contributed to by the active negligence of plaintiff.

FOURTH AFFIRMATIVE DEFENSE

The damages and injury alleged by plaintiff, if any there were, were proximately caused by the sole negligence or willful misconduct of plaintiff or its agents, servants and independent contractors who were directly responsible to plaintiff.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff is estopped and/or barred from recovery to the extent that its own acts, omissions and breaches of contract and other duties caused or contributed to the alleged damages or harm claimed by plaintiff.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff materially breached its contracts with defendants, including the insurance policies attached as exhibits to the complaint, thereby discharging and excusing any duties on the part of

these answering defendants or conditions to plaintiff's obligations.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff failed to minimize and/or mitigate the alleged damages and harm which it claims, and is therefore barred from any recovery or relief.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiff knowingly assumed the risks and hazards in connection with the matters set forth in the complaint.

NINTH AFFIRMATIVE DEFENSE

The contractual provisions upon which plaintiff relies to avoid its obligations were and are manifestly unreasonable, unconscionable, ambiguous and unenforceable.

TENTH AFFIRMATIVE DEFENSE

Plaintiff was negligent in or about the matters referred to in the complaint and such negligence bars any recovery or relief against these answering defendants.

ELEVENTH AFFIRMATIVE DEFENSE

The complaint is barred because plaintiff failed to give these answering defendants proper notice, in a timely and reasonable manner, of any such alleged breach or unfulfilled condition, nor were said parties afforded an opportunity to fulfill their obligations in each instance.

TWELFTH AFFIRMATIVE DEFENSE

No act or omission of these answering defendants was a substantial factor in bringing about the damages or harm alleged.

THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiff is estopped by its conduct from denying coverage under the insurance policies which are attached as exhibits to the complaint.

FOURTEENTH AFFIRMATIVE DEFENSE

Plaintiff is guilty of laches in connection with the facts and circumstances giving rise to this action.

FIFTEENTH AFFIRMATIVE DEFENSE

Plaintiff failed to perform acts which were required on its part and breached its contractual and other duties to these answering defendants, which bars plaintiff from the relief sought.

WHEREFORE, these answering defendants pray for judgment against plaintiff as follows:

1. That plaintiff take nothing by its complaint;
2. That these answering defendants be awarded their costs, expenses and attorney's fees incurred herein; and
3. That these answering defendants be awarded such other and further relief as the Court may deem just and proper.